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Before the  
**UNITED STATES COPYRIGHT OFFICE**  
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Washington, DC

JAN 22 2002

GENERAL COUNSEL  
OF COPYRIGHT

_____ )	
In the Matter of Adjustment of )	Docket No. 2001-1 CARP DSTRA 2
Rates and Terms for the Digital )	
Performance of Sound Recordings )	Docket No. 2001-2 CARP DTNSRA
_____ )	

**JOINT REPLY COMMENTS OF XM SATELLITE RADIO, INC. AND  
SIRIUS SATELLITE RADIO INC.**

In response to the Copyright Office's Notice of Inquiry ("NOI"), XM Satellite Radio, Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius"), the two pre-existing satellite digital audio radio services, showed why new subscription services should not be included in the Pre-existing Services CARP (Docket No. 2001-1 CARP DSTRA 2) and why it would be inefficient, and would create unnecessary complexity and confusion, to consolidate any New Subscription Services CARP (Docket No. 2001-2 CARP DTNSRA) with the upcoming Pre-existing Services CARP. The Recording Industry Association of America, Inc., the American Federation of Television and Radio Artists and the American Federation of Musicians of the United States and Canada also filed joint comments opposing consolidation and demonstrating why consolidation was inappropriate.

No party to either the up-coming Pre-existing Services CARP or to the New Subscription Services CARP has requested consolidation. The parties that have taken a position on the issue have opposed consolidation. That should end the matter, as there arguably is no contested matter pending before the Copyright Office.<sup>1</sup>

The only voice arguing for consolidation, DiMA, is not a party to either CARP. DiMA has not filed a notice of intent to participate nor does it claim to be speaking on behalf of any of the parties to either CARP. DiMA's sole supposed interest in the proceeding is that its "members include Internet webcasters that currently offer, or intend to offer, noninteractive subscription services pursuant to the Section 114 statutory license." These alleged members are not identified. The exact nature of their services is unknown. Their interest or desire to participate in the New Services CARP is unstated. Given the complete lack of information regarding the members it purports to represent, DiMA's assertion that the parties to the two proceedings "will be presenting a substantial volume of common evidence," and its suggestion that expert witnesses could potentially be shared, are purely speculative.

In any case, DiMA's speculations are clearly outweighed by the complexities that will result from consolidation. As XM and Sirius showed in their initial comments, the Pre-existing Services CARP will determine rates and terms for a five year license period and apply the fee standard set forth in Section 801(b)(1), while any New Subscription Services CARP will determine rates and terms for a two year license period and will apply a "willing buyer/willing seller" fee standard. Neither DiMA, nor its unidentified members, will pay the price of the added complexity that consolidation would create. And as non-participants, neither it, nor its

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<sup>1</sup> The Copyright Office inquiry resulted from a petition filed by Music Choice. That petition has since been withdrawn and Music Choice has made clear that it does not favor consolidation. Petition to Withdraw at 2  
Footnote continued on next page

unidentified members, would benefit from any of the efficiencies that it claims will arise from consolidation

Consolidation also would mean that the Copyright Office would once again be required to administer a CARP with numerous industries having different interests. The ongoing non-subscription services CARP highlights the problems with such consolidation. It is the understanding of XM and Sirius that two major participating industries have been unable to effectuate a settlement agreement desired by both, at least in part because of the procedural difficulties caused by consolidation of multiple types of webcasting in the same proceeding.

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(“As a result, there is no reason to seek a consolidated rate setting process.”). Music Choice has informed the Copyright Office that the “Backstage Pass” service that gave rise to its petition is no longer operational.

For the reasons set forth above and stated in its original comments, XM and Sirius oppose the consolidation of the Pre-existing Services CARP with any New Subscription Services CARP the Office may convene.

Respectfully submitted,

**XM SATELLITE RADIO, INC.**

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**SERVICE LIST**  
**Docket No. 2001-2 CARP DTNSRA**

I hereby certify that on this 22<sup>nd</sup> day of January, 2002, copies of the foregoing Joint Reply Comments of XM Satellite Radio, Inc. and Sirius Satellite Radio Inc. were served by facsimile to the following:

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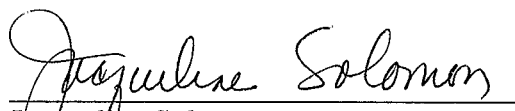
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January 22, 2002

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**By Hand Delivery**

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Copyright Office  
James Madison Memorial Bldg.  
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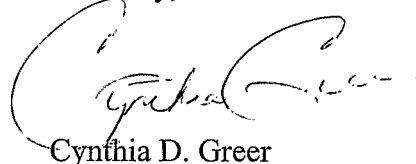
**Re: Joint Reply Comments of XM Satellite Radio, Inc. and  
Sirius Satellite Radio Inc.  
Docket No. 2001-1 CARP DSTRA-2; Docket No. 2001-2 CARP DTNSRA**

Dear Sir:

On behalf of XM Satellite Radio, Inc., and Sirius Satellite Radio Inc., please find enclosed one (1) original, five (5) copies and two (2) receipt copies of Joint Reply Comments of XM Satellite Radio, Inc. and Sirius Satellite Radio Inc. Please date-stamp and return to the courier the (2) receipt copies.

Should any questions arise concerning this matter, please contact the undersigned.

Sincerely,



Cynthia D. Greer

Enclosures

Document #: 1205680 v.1

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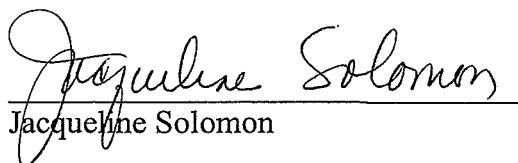
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